

# Notice of Allowability

Application No.

10/072,323

Examiner

Raymond J. Bayerl

Applicant(s)

KODOSKY, JEFFREY L.

Art Unit

2173

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 30 May 2006; facsimile submission of 22 June 2006.
2. ☒ The allowed claim(s) is/are 80 - 86, 88 - 101, 103 - 108, all other claims canceled.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2173

26 June 2006

Art Unit: 2173

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Authorization for this examiner's amendment was given in a telephone interview with Mr. Hood on 22 June 2006.

3. The application has been amended as follows:

In the Specification:

Page 5, line 25—" , now U.S. Patent No. 6,690,981," has been inserted after "09/565,610";

Page 12, line 15—" , now U.S. Patent No. 6,802,053," has been inserted after "09/617,600";

Page 12, line 21—" , now U.S. Patent No. 6,690,981," has been inserted after "09/565,610".

These amendments to the specification serve to update the status of related applications that have been incorporated by reference.

In the Claims:

The copy of claims 80 – 86, 88 – 101, 103 – 108 has been replaced by the supplemental response submitted by facsimile on 22 June 2006.

The claims have been further amended to avoid rejection by the prior art, such as that which appeared in the office action mailed 22 August 2005, which relied upon Kodosky et al. (US #5,301,301).

Art Unit: 2173

4. The following is an examiner's statement of reasons for allowance:


In drafting the supplemental response of 22 June 2006, applicant has distinguished the claimed invention over prior art references that deal with the basic LabVIEW functions that appeared in publications before applicant's 23 October 2001 filing date. The outstanding rejection under 35 USC 103(a), based upon Kawachi et al. (US #6,690,981 B1) and King (US #2003/0,071,845 A1) is obviated in view of applicant's assertion in the 30 May 2006 response, to which the Examiner agrees; that these filings were commonly owned with the present application, and thus under 35 USC 103(c) cannot serve as references against the present claims under 35 USC 103(a) that merely qualify as prior art under 35 USC 102(e).

Made of record concurrent with this action (see attached form PTO-892) are a number of US Patent documents that have been cited within the present specification. As in the case of the above-noted US 5,301,301 to Kodosky et al., the disclosures that appear there do not enter into the detail that is now recited in independent claims 80, 97, 98, 99, 108.

The claims now clearly call for inclusion of a block diagram that controls characteristics affecting the appearance of an included user interface element, where the user interface element has an appearance that is separate from any data displayed in the user interface element. While it was known in art like Kodosky et al. '301 to build block diagrams from other block diagrams that ultimately affect a user interface element's data output, the subcomponent block diagrams associated in the earlier

LabVIEW-related publications are not directed to affecting user interface element appearance, apart from the data that is shown by those elements.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - Th from 9:30 AM to 4:30 PM ET.
7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached at 571-272-4063. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (571) 273-8300.
8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

  
RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2173

26 June 2006